

UNITED STATES OF AMERICA  
Before The  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION  
OFFICE OF THE PRESIDENT

Postal Rate and Fee Changes, 2000 )

Docket No. R2000-1

OFFICE OF THE CONSUMER ADVOCATE  
ANSWER TO STAMPS.COM'S MOTION TO DENY ACCESS  
TO DOUGLAS F. CARLSON  
(August 22, 2000)

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To: Hon. Edward J. Gleiman  
Presiding Officer

Pursuant to Section 21(b) of the Rules of Practice and Procedure of the Postal Rate Commission ("Commission"), the Office of the Consumer Advocate ("OCA") hereby opposes the motion of Stamps.com<sup>1</sup> to deny access to material filed by Stamps.com under protective conditions in compliance with Commission orders.<sup>2</sup>

Stamps.com seeks to exclude Mr. Carlson from any access to the material the Commission has required be provided for the benefit of the participants, and as to which the Commission has even extended special protective conditions. While the OCA is no fan of restricting access to relevant material through protective conditions, the

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<sup>1</sup> "Stamps.com's Objection to Providing Access to Stamps.com's Protective Material to Douglas F. Carlson," filed August 15, 2000. Although characterized as an "objection," Stamps.com's filing is not a recognizable objection under the Commission's Rules but, rather, a motion to deny Mr. Carlson access to certain material filed under protective conditions pursuant to Commission orders. As such, it must be treated as a motion under Rule 21, to which answers are permitted.

<sup>2</sup> "Ruling Partially Granting Motions of the United States Postal Service To Compel Answers to Interrogatories Concerning Customer Demographic Information Requests from Stamps.com and E-Stamp," POR No. R2000-1/97, issued July 25, 2000, and "Presiding Officer's Ruling Granting Uncontested Motion of Stamps.com for Material To Be Provided Under Protective Conditions," POR No. R2000-1/106, issued August 1, 2000.

comprehensive requirements adopted in POR Nos. R2000-1/97 and 1/106 certainly mean that no competitive harm will be suffered by Stamps.com and, therefore, that Stamps.com's motion must be denied.

Mr. Carlson is an active citizen participant before the Commission. His participation in this and other Commission proceedings has amply demonstrated that he understands, respects, and complies with the myriad requirements of administrative litigation. Mr. Carlson has submitted fully qualifying certifications in the form required by POR Nos. R2000-1/97 and 1/106. There is no indication whatever that Mr. Carlson would disregard the terms of disclosure, or fail to honor his personal certification that he will "comply with all protective conditions and will maintain in strict confidence these materials in accordance with all of the protective conditions set out above."

Nor can Stamps.com seriously contest Mr. Carlson's eligibility to receive the material under paragraph one of the protective conditions. He is an active and acknowledged participant in this proceeding. Stamps.com does not allege that Mr. Carlson is involved in any aspect of "competitive decision-making for any entity that might gain competitive advantage" from access to the material—the only reason for which a participant (or representative of a participant) in Docket No. R2000-1 can be denied access to material placed under the POR Nos. R2000-1/97 and 1/106 protective conditions. In short, there is no basis in the protective conditions—adopted at Stamps.com's request—to deny Mr. Carlson access to the material.

Stamps.com argues that the OCA and the Postal Service can adequately represent Mr. Carlson's interests. The OCA concurs with the comments filed by the

Postal Service on this matter.<sup>3</sup> The OCA does not presume to speak for an active and interested citizen-intervenor such as Mr. Carlson. It is entirely possible that the OCA may take a different position from that of Mr. Carlson on the underlying issue of discounts for IBI postage.<sup>4</sup>

Finally, Stamps.com attempts to shift the burden by asking that Mr. Carlson explain why he should be provided access to the material. Such burden-shifting should not be countenanced. Under the terms of the protective conditions adopted at Stamps.com's request, it is squarely the responsibility of Stamps.com to justify why an individual seeking access does not qualify under the protective conditions. As noted above, Stamps.com has failed to do so. Motions practice led to the decision that the material is relevant and should be available—participants must not be put through a second round of motions practice to justify their individual interest in seeing relevant documents.

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<sup>3</sup> "Comments of the United States Postal Service Concerning Stamps.com's Objection to Intervenor Douglas Carlson Obtaining Access to Material Submitted by Stamps.com Under Protective Conditions," filed August 17, 2000.

<sup>4</sup> Indeed, Stamps.com fails to note that at the time it filed its motion, the OCA had not yet filed notice of the submission of the certifications necessary for the OCA to review the protected material. The OCA intends to do so, but even so there is no basis to prevent Mr. Carlson from expressing his own views.

WHEREFORE, the OCA requests that Stamps.com's motion be denied and that Mr. Carlson be given immediate access to the material, subject to the protective conditions by which Mr. Carlson has agreed to be bound.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ted P. Gerarden", written over a horizontal line.

TED P. GERARDEN

Director

Office of the Consumer Advocate

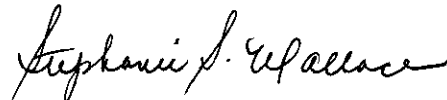
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# CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with Section 12 of the Rules of Practice.

  
Stephanie S. Wallace

Washington, DC 20268-0001  
August 22, 2000